

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

EMMETT W. CALDWELL,)	
)	
Plaintiff,)	
)	
v.)	1:09CV628
)	
DATA(DURHAM AREA TRANSIT)	
AUTHORITY), et al.,)	
)	
Defendant(s).)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On August 14, 2009, Plaintiff Emmett W. Caldwell filed a civil action in this Court and requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Plaintiff sues a City of Durham bus driver, and others, based upon allegations that the bus driver insulted him, and he is disabled. Plaintiff seeks monetary damages.

In *Neitzke v. Williams*, 490 U.S. 319 (1989), the United States Supreme Court held that a district court may dismiss the complaint of a *pro se* litigant under 28 U.S.C. § 1915(e)(2)(B) when the complaint lacks “an arguable basis either in law or in fact.” *Id.* at 325. *Neitzke* explained that “[§ 1915(e)(2)(B)] accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Id.* at 327. Additionally, under *Denton v.*

Hernandez, 504 U.S. 25, 32-33 (1992), a court may dismiss as frivolous *in forma pauperis* complaints whose factual allegations are fanciful, fantastic, delusional, irrational, or wholly incredible, but not those which are simply unlikely.

The Court concludes that Plaintiff Caldwell's complaint is subject to dismissal under *Neitzke*. As is documented in *Caldwell v. Triangle Transit Authority*, No. 1:08CV10 (M.D.N.C. Recommendation of Aug. 22, 2008), Plaintiff Caldwell has filed over 128 civil actions since 1988, more than 25 in this court. Plaintiff's current complaint obviously fails to state a cause of action when reviewed under the test of *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) and *Ashcroft v. Iqbal*, ____ U.S. ____, ____, 129 S. Ct. 1937, 1947 (2009). His claims are fanciful, delusional, and irrational. His own allegation is that he was insulted and threatened by a bus driver after he called her "bitch." This is not the stuff of a federal lawsuit.

For these reasons, **IT IS RECOMMENDED** that *in forma pauperis* status be granted and that Plaintiff's complaint be dismissed as frivolous under 28 U.S.C. § 1915(e)(2)(B).

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: August 21, 2009